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In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

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GEORGE RIGGS & CO., RESPONDENTS. } No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, in behalf of the United States, respectfully prays for a writ of certiorari herein to bring up the case for review of the decree of the United States Circuit Court of Appeals for the Second Circuit, wherein it adjudged that figured cotton goods, dutiable under paragraph 313 of the tariff act of July 24, 1897, should pay only 1 or 2 cents per square yard as therein provided, in addition to the specific rates of paragraphs 306 and 307 for other cotton cloth of the same description or condition, weight, and count of threads; and that the ad valorem provisions of those sections applicable to all unfigured cottons above the values named were always to be ignored when computing rates upon figured material, irrespective of its value.

Under the rule laid down by the court, figured cotton goods manufactured at a much higher cost than plain may be entitled to entry at a decidedly lower rate.

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BRIEF IN SUPPORT OF THE PETITION.

I.

STATEMENT.

The matter involved is the classification of figured cloth under the tariff act of 1897, paragraph 313 of which prescribes that cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure shall pay, *in addition* to the duty provided by sections 304 to 309 for other cotton cloth of the same description, weight, and count of threads, 1 or 2 cents per square yard, according to value.

The Circuit Court of Appeals declared, "We have little doubt that it was the purpose of Congress, after cotton cloths had been properly classified under paragraphs 306 and 307, to lay an additional duty per square yard upon such cloth as was figured; in other words, to place an extra duty upon the figure, so that figured cotton cloth should pay a higher duty than the same cloth plain"—and then proceeded so to construe section 313 as to make it directly conflict with that purpose and defeat the manifest object of Congress. If its decision is correct, figured cotton cloth will pay much less duty than was intended, in many cases less than plain cotton cloth of the same general character, and not infrequently less than if the section providing *additional* duties (313) had not been enacted.

This peculiar result is supposed to arise from ambiguity in language; but if such ambiguity is present at all it disappears when the intention of Congress is considered.

Both the Government and domestic manufacturers are specially interested. The Secretary of the Treasury states that "there are approximately 5,080 suspended protests on file with the Board of United States General Appraisers covering the issue involved, and that the approximate refunds under the decision of the court are estimated to be $280,000." Future collections of revenue may be materially impaired, especially so, as foreign makers may introduce inconspicuous and inexpensive figures in fine cottons for the sole purpose of securing a lower rate of duty. In fact—so greatly has the purpose of paragraph 313 been distorted—the decision is equivalent to offering a bounty to foreign manufacturers to introduce a figure into plain goods.

The construction adopted by the court below, if not repudiated, will also defeat, in large measure, the purpose of Congress to give special encouragement to domestic manufacturers of figured cottons, and may seriously cripple that industry, which, under the protection heretofore supposed to exist, I am informed has grown into very considerable importance, giving employment to many people and large capital. Domestic manufacturers estimate that a product of $50,000,000 will be affected by this adverse decision. I am further advised that the use of expensive cottons has shown large increase in recent years and that the growth will probably continue.

The tariff act of July 24, 1897 (30 Stat., 176, 178), contains the following paragraphs, which constitute part of the countable provisions of the cotton schedule:

Par. 306. Cotton cloth, *not bleached, dyed, colored, stained, painted, or printed*, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; *if bleached*, and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; *if dyed, colored, stained, painted, or printed*, and not exceeding four square yards to the pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: *Provided*, That on all cotton cloth ex-

ceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, *not bleached, dyed, colored, stained, painted, or printed*, valued at over nine cents per square yard, thirty per centum ad valorem; *bleached*, valued at over eleven cents per square yard, thirty-five per centum ad valorem; *dyed, colored, stained, painted, or printed*, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

Par. 307. Cotton cloth, *not bleached, dyed, colored, stained, painted, or printed*, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, and not exceeding three and one-half square yards to the pound, two cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, three cents per square yard; exceeding six square yards to the pound, three and one-half cents per square yard; *if bleached*, and not exceeding three and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, three and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four cents per square yard; exceeding six square

yards to the pound, four and one-fourth cents per square yard; *if dyed, colored, stained, painted, or printed,* and not exceeding three and one-half square yards to the pound, four and one-fourth cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, four and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four and three-fourths cents per square yard; exceeding six square yards to the pound, five cents per square yard: *Provided,* That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, *not bleached, dyed, colored, stained, painted, or printed,* valued at over ten cents per square yard, thirty-five per centum ad valorem; *bleached,* valued at over twelve cents per square yard, thirty-five per centum ad valorem; *dyed, colored, stained, painted, or printed,* valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of forty per centum ad valorem.

Par. 310. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp or filling threads of which can be counted by unraveling or other practicable means.

Par. 313. Cotton cloth in which other than the ordinary warp and filling threads have been

introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The paragraphs in the tariff act of 1894 (28 Stat., 527–529), corresponding to 306, 307, and 310 and similar ones in the act of 1897, are numbered 252 to 257, inclusive.

The imports were cotton cloth in which other than the ordinary warp and filling threads had been introduced in the process of weaving to form a figure. The number of threads to the square inch, condition, and value per square yard are shown in the table following:

Item.	Case.	Count of threads.	Condition.	Value per square yard.
1561	2204	100–150	Colored	14½ cents, or over 12½ cents.
1431	2204	100–150	Bleached	11⅞ cents, or over 11 cents.
1	2206	100–150	Colored	13½ cents, or over 12½ cents.
N610	2209	150–200	Bleached	13½ cents, or over 12 cents.

Examination of the table, in connection with the provisions quoted, will show that the first three items fall under paragraph 306 and the last under 307. The collector liquidated the entry at 35 per cent ad

valorem, plus 2 cents per square yard, according to his construction of section 313.

The first, second, and third items contained between 100 and 150 threads to the square inch, and if unfigured would have been dutiable at 35 per cent under section 306. The fourth item contained between 150 and 200 threads, and if unfigured would have been dutiable at 35 per cent under section 307.

The importers claimed that under proper construction of section 313 the total duty should be computed by adding 2 cents per square yard to the specific duty prescribed by paragraphs 306 or 307 for plain cloth containing the same number of threads to the square inch and in the same condition—plain, colored, or bleached—as the goods in question; and that the ad valorem rates prescribed by the *provisos* of those sections were not to be considered. This contention was based on the wording of paragraph 313, the argument being that ad valorem duties necessarily depend upon value and that no mention was made of that element in the description of the unfigured cloth referred to in the language of the section which declares figured goods shall pay, "in addition to the duty herein provided for other cotton cloth of the same *description* or *condition*, *weight*, and *count of threads* to the square inch, one cent per square yard," etc.

The weights of these items are not given; but that is immaterial, because, as hereafter demonstrated, the specific duties would in any event be less than the ad valorem.

The Board of General Appraisers sustained the collector (R., 16–19). The Circuit Court reversed that decision (R., 20–21), and this was approved by the Circuit Court of Appeals (R., 25–27).

II.

The history of paragraph 313 makes its meaning clear.

The provisions in paragraph 313 were new legislation, appearing first in the act of 1897. Without that the countable provisions in the cotton schedule were in accord with the general plan observed in all tariff laws since 1883 and under which cotton cloth containing a certain number of threads to the square inch and not exceeding a given value per yard was dutiable at specified rates, and when above such value, at an ad valorem rate. (Act of 1883, 22 Stat., 505, 506; act 1890, 26 Stat., 591, paragraphs 344–348; act 1894, 28 Stat., 527, paragraphs, 252–257.)

In *Heddon* v. *Robertson* (151 U. S., 520, 526), instituted under the act of 1883, madras mull, a woven cotton cloth the groundwork of which was uniform and upon which were figures or patterns woven contemporaneously with the weaving of the fabric, was held dutiable under the countable provisions and not at the lower rate for manufactures of cotton not otherwise specifically provided for, as importers claimed. The court said: "The ornamentation placed upon the groundwork fabric does not change its character as cotton cloth subject to the countable clause of the statute." (*United States* v. *Albert*, 60 Fed., 1012.)

Paragraph 257, act of 1894, provides: "The term 'cotton cloth' or 'cloth,' wherever used in the fore-

going paragraphs of this schedule, shall be held to include all woven fabrics of cotton in the piece, whether figured, fancy, or plain, not specially provided for in this act, the warp and filling threads of which can be counted by unraveling or other practicable means." Paragraph 310, act 1897, is to the same effect.

By the act of 1894 figured cotton cloth was clearly dutiable according to number of threads and value at either a specific or ad valorem rate under the same paragraphs as plain goods. And this would be true under the act of 1897 but for paragraph 313.

It is ordinarily much more expensive to manufacture figured goods than plain, and in pursuance of the well-known policy of the Dingley law we would reasonably expect to find therein a higher rate imposed upon the more expensive article. And for that very purpose paragraph 313 was added to the cotton schedule. The tax therein imposed is expressly stated to be "in addition to the duty herein [in this act] provided for other cotton cloth of the same description, etc."

In *Claflin* v. *United States* and *Mills* v. *United States* (109 Fed., 562, 564; affirmed 114 Fed., 257, 259), paragraph 313, act 1897, was construed to embrace figured cotton goods of the general character of those here in question. In neither of those cases was it disputed that the goods were dutiable at either the specific rates, or, if sufficiently valuable, at the ad valorem rates of the countable paragraphs. The importers contended that the figures were not produced in the manner required by paragraph 313. This was overruled, and now a new line of attack is being followed.

III.

It was unnecessary for identification of the duty intended to use the word "value" in describing the "other cotton cloth," referred to in paragraph 313.

Determination of "the duty herein [in this act] provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch," referred to in paragraph 313, necessarily depends upon its value according to the very terms of the countable paragraphs of the act; and there is nothing to show Congress intended an entirely different rule should be adopted when applying the new paragraph—313. Its language certainly necessitates no such thing, and its spirit is in conflict with that construction. The purpose of Congress was to impose additional duty, because of increased labor necessary to manufacture figured goods, in harmony with the policy pervading the entire cotton schedule, which consistently prescribes higher duty as values increase through fineness, bleaching, coloring, etc. The protective character of tariff laws and the policy of Congress to impose higher duties upon finer articles and to increase the same as additional processes enter into their manufacture have been frequently recognized. (*Arnold* v. *United States*, 147 U. S., 497, 498; *Tidewater Oil Co.* v. *United States*, 171 U. S., 219.)

In *Bensusan* v. *Murphy* (10 Blatchf., 530), relied upon by the importers, the statute prescribed a specific duty per gallon upon wine and in addition an ad valorem duty of 25 per centum upon wine when imported

in casks; if imported in bottles, "the same rate per gallon as wines imported in casks and an additional duty of 3 cents per bottle." Certain wine was imported in bottles and the collector assessed the specific duty per gallon, the advalorem duty at 25 per centum, and in addition 3 cents for each bottle. The court held the words "the same rate per gallon as wines imported in casks" referred only to the specific duty and did not include the ad valorem duty because "the latter can in no just sense be regarded as a rate per gallon."

In section 313 Congress did not provide figured cloth shall pay the same rate per square yard as "other cotton cloth of the same description," but that figured cotton cloth "shall pay in addition to *the duty* herein provided for other cotton cloth," etc.

The fact that the imposition of either 1 or 2 cents additional duty under paragraph 313 depends on whether the valuation is more or less than 7 cents shows no intention to ignore the ad valorem provisions of the countable paragraphs. It is entirely feasible to put both provisions into operation—they were intended to and do harmonize. The valuation of 7 cents is the lowest in the countable paragraphs (306) which necessitates ad valorem assessment, and doubtless for that reason the same figure was adopted and inserted in paragraph 313.

According to the construction asked by importers, figured goods, notwithstanding the *additional* payment required of them (313), could be brought in for less than plain goods. Illustrative exhibits were presented by the Government's examiner of cotton goods to show

that certain cotton cloths frequently imported would pay less duty than similar cloth of plain weave if the importers' contention prevailed. (R., 11–16.) The exhibits represented actual importations such as he was frequently called on to pass.

Illustrative Exhibit A–1 was plain cotton goods valued at 26 francs for 30 yards; Exhibit A–2, fancy woven goods "of the same description," valued at 92 francs for 30 yards. The duties upon the plain goods and also the estimated duties upon the fancy weaves, according to the conflicting theories, were shown to be as follows:

Total amount of duty per lineal yard, upon #1 (plain weave) at 35%, under proviso to 306.	8.78 cents.
Total amount of duty per lineal yard upon #2 (fancy cloth) if only the specific rates contended for by the importer were imposed, *i. e.*, 4½ cents plus 2 cents.	7.95 cents.
Total amount of duty per lineal yard on #2 (fancy cloth) at 35% and 2 cents per square yard, as at present imposed by the Government.	23.15 cents.

Similar results were shown with respect to illustrative Exhibit B, Nos. 1 and 2, representing plain and dotted cloths of the same description.

Total amount of duty per meter upon #1 (plain weave) at 35%, under proviso to 306.	9.3 cents.
Total amount of duty per meter upon #2 (fancy cloth) if only the specific rates contended for by the importer were imposed, *i. e.*, 3 cents plus 2 cents.	5.95 cents.
Total amount of duty per meter on #2 (fancy cloth) at 25% and 2 cents per square yard, as at present imposed by the Government.	16.81 cents.

The record does not show the weights of the present importations. It can not therefore be determined therefrom what is the exact difference between the ad valorem rates imposed and the specific rates claimed. That the latter would be less is of course sure.

Take the first item (No. 1561), colored cloth, containing 100 to 150 threads to the square inch. It is dutiable under paragraph 306, which provides specific rates for colored cloth ranging from $3\frac{1}{2}$ to $4\frac{1}{2}$ cents per square yard according to its weight. The value being $14\frac{1}{2}$ cents, the ad valorem duty of 35 per centum is 5+ cents—$1\frac{1}{2}$ cents more than the lowest and one-half cent more than the highest possible specific duty.

The second item (No. 1431), bleached cloth, containing 100 to 150 threads to the square inch, is also dutiable under paragraph 306, the specific rates provided thereby for bleached cloth ranging from $2\frac{1}{2}$ to $3\frac{3}{4}$ cents per square yard according to its weight. The value of this item being $11\frac{3}{8}$ cents, the ad valorem duty of 35 per centum is about 4 cents ($3\frac{97}{100}$).

The other items will figure out the same way.

It is also manifest that in the case of figured cotton cloth of slightly greater value than the items in question the ad valorem duty alone—to which such cloth would confessedly be subject but for paragraph 313—will be greater than the highest possible specific duty plus the additional charge provided by paragraph 313. In other words, the importers are contending for a rule which would make the *additional* duty operate by way of *subtraction*. With the increase in value of such

goods the difference would be accentuated. The following table, prepared by an expert in one of our large manufactories, further illustrates the situation:

"Comparison of duties on cotton cloth without extra figure and cotton cloth with extra figure as assessed by appraisers and also under decision of Circuit Court. Description: dyed, 6 to 8 yards to pound, 100 to 150 threads to square inch (see paragraph 306 and 313).

Cost per square yard.	Without figure, duty 35 per cent.	With figure, appraisers' assessment, 35 per cent and 2 cents.	With figure, Circuit Court decision, duty 4½ cents and 2 cents.
Cents.	*Cents.*	*Cents.*	*Cents.*
13	4.55	6.55	6½
15	5.25	7.25	6½
18	6.30	8.30	6½
20	7	9	6½
25	8.75	10.75	6½
30	10.50	12.50	6½
35	12.25	14.25	6½
40	14	16	6½

"Above shows that the duty under Circuit Court decision on figured cloth is less than on plain cloth above 18 cents cost per square yard, and on goods costing 30 cents per square yard is only half what it should be as assessed by appraisers."

IV.

The rule that duties should not be imposed upon vague or doubtful interpretations is inapplicable.

The Board of General Appraisers, in its opinion, said (R., 18):

> It will be conceded that the aim of the law is to fix the duty in proportion to the amount of labor or cost of the commodity. Bearing that in mind, it is hardly conceivable that

> Congress intended to enact paragraph 313 and by its application reduce the duty provided for in previous paragraphs of the act upon cotton cloths of a high value and grade, which would be the result if the importers' contention is correct. We think it perfectly reasonable that this additional duty should be imposed upon cloth "in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," whether the original duty be of an ad valorem or specific nature.
>
> It must be remembered that this is an additional duty, levied regardless of the method of levying the original duty, and is imposed upon any cotton cloth included in the dutiable list, providing for 1 cent per yard upon all cloth of the value of 7 cents or less, and 2 cents per yard if worth more than 7 cents. Hence we conclude that in order to give full effect to each paragraph of this schedule the additional duty may be imposed upon the goods either provided for in the bodies or the provisos of paragraphs 306 and 307.

Because they thought the question involved a doubtful one the courts decreed in favor of the importer. The Circuit Court of Appeals, however, declared in effect they little questioned that the real purpose of Congress was not in harmony with the conclusion which they reached. (R., 26.) The intention of Congress being clear, any ambiguity of language should have been resolved in harmony therewith. "The in-

tent of the lawmaker is the law." (*Jones* v. *Guaranty and Indemnity Co.*, 101 U. S., 626.)

Where the intent is plain the law should be construed in harmony therewith. Every doubt or dispute is not to be resolved in favor of the importer. (*Newman* v. *Arthur*, 109 U. S., 132; *Heddon* v. *Robertson*, 151 U. S., 520.)

In *United States* v. *Wetherell* (65 Fed., 987, 990) the Circuit Court of Appeals of the First Circuit overruled the defense bottomed on the constantly advanced doctrine that "duties are never to be imposed upon vague or doubtful interpretations," and said in reference thereto:

> The rule has received no practical construction by the Supreme Court, so far as decisions of that court have been brought to our attention. The first case was *United States* v. *Isham* (17 Wall., 496), which related to the question whether a certain instrument was subject to a stamp duty or not; and, although the court stated generally the rule relied on by the present importer, it disposed of the case without coming to any application of it. The next was *Hartranft* v. *Wiegmann* (121 U. S., 609). This raised a question as between free and dutiable goods; but the court concluded that the decision of the Circuit Court was correct, and continued: "But, if the question were one of doubt, the doubt would be resolved in favor of the importer." The court did not go beyond the hypothesis, so that it had no occasion to apply the rule under consideration. In like manner, in

the well-known case of *Twine Co.* v. *Worthington* (141 U. S., 468), the court, on page 474, said that the intention of Congress was plain. This, of course, was enough to end the litigation. *Earnshaw* v. *Cadwalader* (145 U. S., 247) turned on an issue for the jury. The court merely stated the ordinary rule that the jury must be satisfied by a preponderance of evidence, and that the case was not within the earlier ones to which we have referred. *There can be no question as to the general proposition; yet, like all rules of construction of a similar character, we presume it has no practical use except in cases of extraordinary doubt.* It has a more appropriate application when the question is one of any tax at all; *and the Federal reports are full of suits where the courts have not hesitated to perform the duty of determining mere questions of classification where it was admitted some duty was to be imposed, in favor of the higher rate, under circumstances of great difficulty.*

In view of the importance of the issue and what appears to be a manifest error by the court below, I respectfully ask that the writ of certiorari be granted.

HENRY M. HOYT,
Solicitor-General.

J. C. MCREYNOLDS,
Assistant Attorney-General.

December, 1905.

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